**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 276/1995

SHAHZAD ALI
v
RAMESH CHANDRA SHARMA & ANR.

Date of Judgment: 26th FEBRUARY, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. K.N. Tiwari for the appellant.
Mr. S.R. Joshi for the respondents.

By Court:

This appeal arises out of award dated 28.10.95 passed by the Motor Accident Claims Tribunal, Jaipur City, Jaipur (henceforth to be referred to as 'the Tribunal', for short) whereby the learned Tribunal has awarded a compensation of Rs. 30,000/- to the appellant alongwith an interest of 12% per annum for the injuries suffered by him.

In a nutshell the facts of the case are that on 19.4.93 around 6.00 p.m., in the evening while the appellant was moving his 'Thela' on Sansar Chandra Road, near the Pareek College, a Tempo, bearing Registration No. RNP 1299, being driven rashly and negligently, hit against the appellant. Consequently the appellant's hip bone was fractured. He had to be hospitalised for nine days, and

had to undergo physiotherapy for three months. The appellant filed a claim petition against the Tempo owner, the driver and the Insurance Company. Considering the pleadings of the parties, the learned Tribunal framed four issues. In order to support his case, the appellant examined five witnesses. On the other hand, the respondents did not examine any witness. After going through the oral and documentary evidence, the learned Tribunal, as stated above, granted a compensation of Rs. 30,000/- vide award dated 28.10.95. Since the appellant is still aggrieved by the amount of compensation he has filed the present appeal for enhancement.

Mr. K.N. Tiwari, learned counsel for the appellant, has argued that the appellant has suffered 8.8% of disability according to the medical report. Moreover, during the course of treatment he was hospitalized for nine days and had to undergo physiotherapy for three months. Without considering the physical pain and agony and without considering the future frustration faced by the appellant due to his permanent limp and disability, the learned Tribunal has granted a lump sum of Rs. 30,000/- only. According to him, in the case of R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd. and others, (1995 ACJ, 366), the Apex Court hald laid down the non-pecuniary factors which should be kept in mind. Though, the learned Tribunal should have kept in mind the non-pecuniary factors while granting the compensation, it failed to do so.

On the other hand, Mr. Joshi, learned counsel for the respondent-Insurance Company has argued that the accident had occurred in the year 1993 and the award was passed in the year 1995. For a disability of 8.8% an award of Rs. 30,000/- alongwith 12% interest is more than just and sufficient. Therefore, he has supported the impugned award.

We have heard both the learned counsels and have perused the impugned award.

In the case of R.D. Hattangadi (supra), the Hon'ble Supreme Court has held as under :-

> **"9. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental**

stress in life."

These guidelines established by the Apex Court were certainly available to the Tribunal while passing the impugned award. Therefore, the learned Tribunal should have kept these guidelines in mind. Considering the fact that the appellant was only 30 years old at the time of the accident, considering the fact that for the rest of his life he would have a permanent limp, which would create mental frustration and cause physical agony to him, considering the fact that his disability would also adversely effect his social standing and his working capacity, this Court is inclined to enhance the compensation from Rs. 30,000/- to Rs. 60,000/- alongwith an interest @ 12% from the date of filing of the claim petition till the date of the passing of the award. However from the date of filing of this appeal till the date of realisation, an interest of 9% per annum shall be paid. The Tribunal is directed to recover the said amount from the Insurance Company within a period of two months and to handover the said amount to the claimant within the said period from the date of the receipt of the certified copy of this order.

(R.S. CHAUHAN) J.

MRG.